



December 2016
E-newsletter



Hon. Evelyn Z. Wilson, Chair
Hon. W. Lee Fowler, Vice Chair
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Inside this issue:

2017 Proposed Legislation	1
Congratulations	5
House Bill 2170 Update	6
SB 123 Update	6
FY 2017 Prison Population Projections	7
FY 2017 KDOC Inmate Custody Classification Projection	7
2015 Annual Report	7
2016 DRM Forms	7

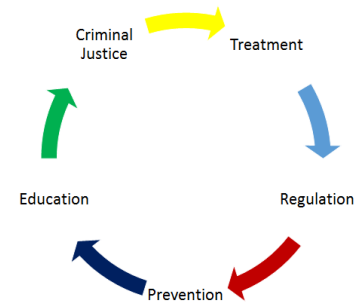
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Proposed 2017 legislation from the KSSC

At the Kansas Sentencing Commission October meeting the following legislative proposals were approved:

Proposal #1-Global Drug Study

A request was made to conduct a global study of drug policy within the state. This would include considering misdemeanor offenses for certain quantities of controlled substances. At this time the bill has not been completed for introduction.



Proposal #2-Diversion and SB123

K.S.A. 21-6824 (2003 SB 123) was created during the 2003 legislative session. Under community corrections supervision, SB 123 provides certified substance abuse treatment for offenders convicted of K.S.A 21-5706 (drug possession), who are non-violent adult offenders with no prior convictions of drug trafficking, drug manufacturing or drug possession with intent to sell. As noted, the offender must be convicted of the drug possession charge.

A Diversion agreement is an agreement between the defendant and the prosecutor indicating if the defendant fulfills all the formal terms and conditions of the agreement the charges will be dismissed. Diversions are entered into before any conviction. Diversion under these circumstances do not count as a conviction. The Commission is requesting persons whose offense is classified as 5C through 5I may enter into diversion agreements for drug possession, that qualify under the statute, and be eligible for SB 123 treatment.

26 Proposal #3-Eliminate Special Rule #26

Currently Special Rule #26 states the sentence for a third or subsequent felony conviction of K.S.A. 2016 Supp. 21-5706 (possession) shall be presumed imprisonment. The Commission wishes to repeal K.S.A. 21-6805(f)(1) and essentially eliminate this special rule.

Proposal #4-SB123 Available for Level 4 Offenders

Currently SB123 treatment is only available for offenders that have been convicted of Level 5 drug offenses. The Commission wishes to make available this treatment for offenders who are charged with a Level 4 drug possession. The proposed change would affect K.S.A. 21-6824(a)(1)(2). This language was proposed to the 2016 Legislature. A hearing was held before the House Corrections and Juvenile Justice Committee but did not move out of committee.



Proposal #5-Unlawful Tampering-Electronic Equipment

Currently Unlawful Tampering with Electronic Monitoring Equipment is a level 6 nonperson felony. The Commission is suggesting changing the severity level to an 8 nonperson felony for individuals that were required to wear it as part of court-ordered supervision or as a condition of postrelease supervision or parole for any felony.

Further change would allow for a misdemeanor offense if the person is convicted for unlawful tampering it would be a class A misdemeanor offense if the person was required to wear it as part of court-ordered supervision or as a condition of postrelease supervision or parole for any misdemeanor or even if it was ordered in a civil case.

In 2016 HB 2459 the Commission suggested making Unlawful Tampering a Level 8 felony. The 2016 legislation was amended and passed out of the House Correction and Juvenile Justice Committee however there was no floor debate before the full House. The current proposal for this legislative session is a result of amendments to the 2016 HB 2459.

Proposal #6-Decay for Juveniles Expanded

In the 2016 legislative session HB 2463 amended statutes governing the determination of criminal history to add nongrid felonies, nondrug severity level 5 felonies, and any drug severity level 1 through 4 felonies committed by an adult to the list of juvenile adjudications that will decay if the current crime of conviction is committed after the offender reaches age 25. This bill passed and is current law.

The Commission in the 2016 session had also suggested a change for decay when a current crime of conviction is committed at least five years after the date of final discharge of the adjudication and there have been no new adjudication during that five-year period and the juvenile adjudication is for an offense which would be a nondrug severity level 5 through 10, felony, nongrid felony or misdemeanor, if committed by an adult. This language was struck from the bill by the Senate Corrections and Juvenile Justice Committee. The Commission is again asking the legislature to reconsider this proposal.

FELONIES AFTER JULY 1, 2016		
PERSON	NONDRUG	NONPERSON
No Decay	Offgrid	No Decay
No Decay	1	No Decay
	2	***
	3	***
	4	***
-	-	-
Decay	5	Decay
Decay	6	Decay
Decay	7	Decay
Decay	8	Decay
Decay	9	Decay
Decay	10	Decay
	<u>Nongrid</u>	Decay
DRUG		
	1	Decay
	2	Decay
	3	Decay
	4	Decay
	5	Decay
ALL MISDEMEANORS DECAY		
***inadvertently deleted from final bill-decay was the intent of Legislature and Decay should occur.		

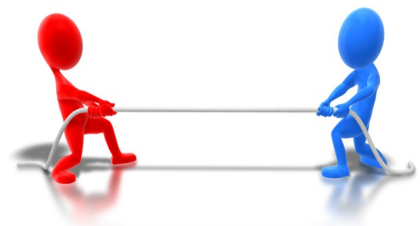
Proposal # 7-Sharing of Data



The Kansas Sentencing Commission has been tasked with many statutory duties pursuant to K.S.A. 74-9101. The Commission is suggesting a data sharing provision to their duties in which all state agencies provide data or information requested by the Commission to carry out the duties and functions of the Commission. There are many data silos in the state and the Commission is wanting to connect with these data sources to better carry out its' mission.

Proposal #8-Conflict about Postrelease

Currently there appears to be a conflict concerning postrelease for a person who has committed a sexually violent crime. K.S.A. 22-3717(d)(1) (D) states if a person has been convicted of a sexually violent crime and the judge finds the current crime sexually motivated the judge may find substantial and compelling reasons to impose a departure and allow for a 60 month postrelease supervision.



However, K.S.A. 22-3717(d)(1)(G) states a person convicted of a sexually violent crime shall be released to lifetime postrelease.

The Commission is proposing to eliminate the language of "persons

(Proposal #8 cont.)

convicted of a sexually violent crime” in subsection (D) to eliminate this conflict to make it clear lifetime postrelease is required for these offenders.

Proposal #9-Postrelease for Juveniles

In *State v. Dull*, 302 Kan. 32, 351 P.3d 641 (2015), cert. denied 577 U.S. ___, 136 S.Ct. 1364, 194 L.Ed.2d 359 (2016), the Kansas Supreme Court noted mandatory lifetime postrelease supervision is categorically unconstitutional when imposed on a juvenile convicted of aggravated indecent liberties with a child, and applies to all juveniles convicted of a sex offense.

To comply with constitutional constraints, the Commission is proposing for offenders under 18 years of age who have been released for a sexually violent crime be released to a mandatory period of postrelease supervision for 60 months plus the amount of good time and program credits. This would be a change to K.S.A. 22-3717(d)(1)(G).

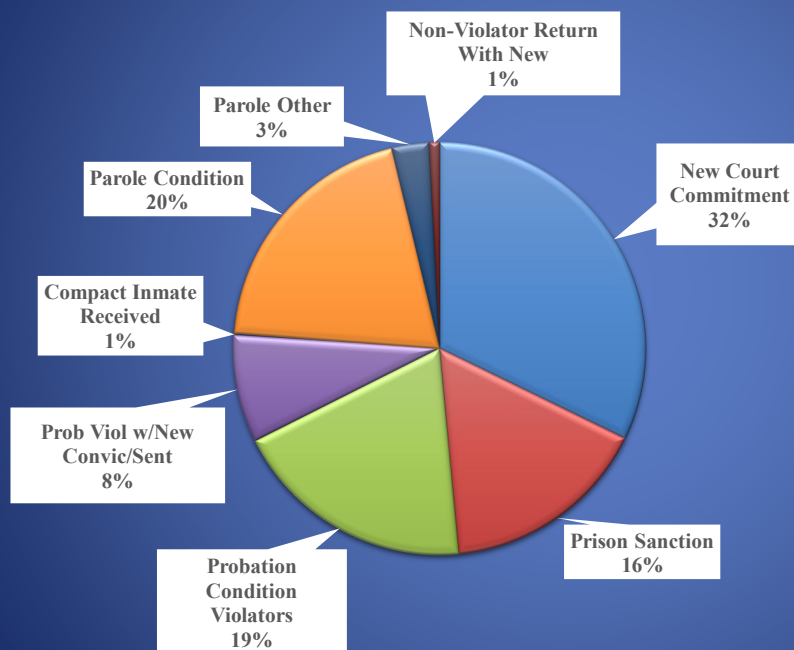
Proposal #10-Conforming \$1500 Threshold with Other Offenses

In 2016 HB 2462 the legislature increased the threshold for felony theft to \$1500. The following crimes have been proposed to conform with this increase for felonies:

- K.S.A. 21-5417: Mistreatment of a Dependent Adult
- K.S.A. 21-5802 Theft of Property Lost, Mislaid or Delivered by Mistake
- K.S.A. 21-5813: Criminal Damage to Property
- K.S.A. 21-5821: Giving a Worthless Check
- K.S.A. 21-5825: Counterfeiting
- K.S.A. 21-5828: Criminal Use of a Financial Card
- K.S.A. 21-5830: Impairing a Security Interest
- K.S.A. 21-5927: Medicaid Fraud
- K.S.A. 21-6002: Official Misconduct
- K.S.A. 21-6005: Misuse of public Funds



FY 16 KDOC Admissions

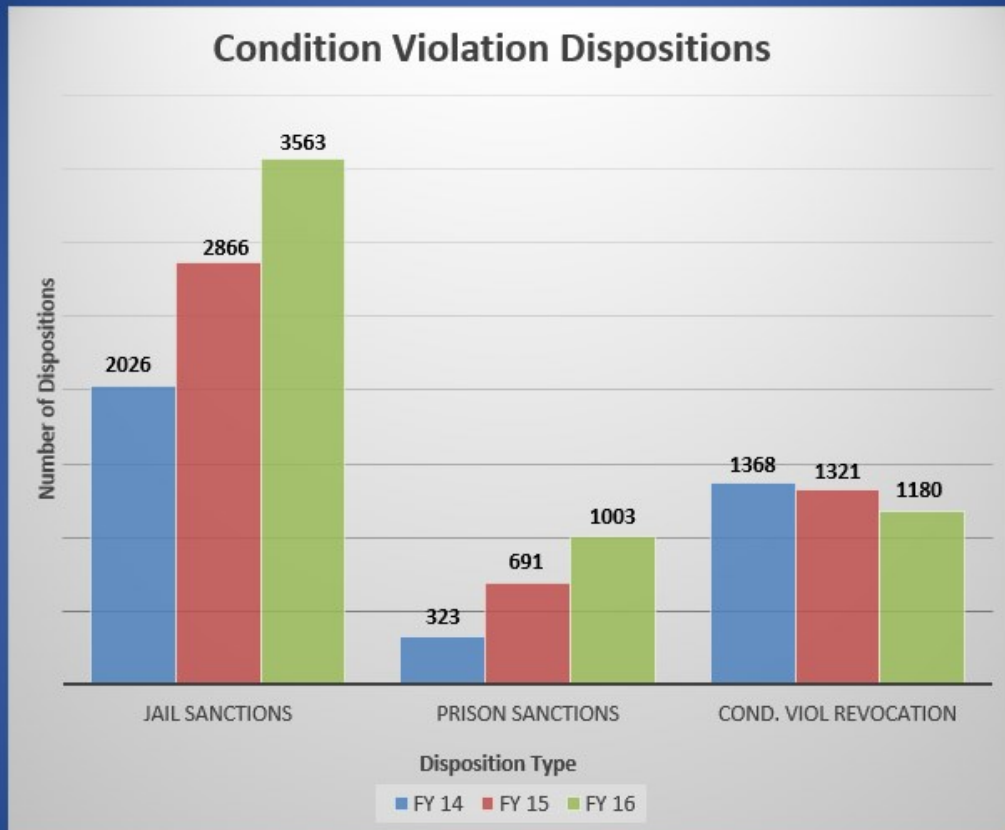


Probation Condition Violator admissions are down from 31% in FY 2013 to 19% in FY 2016.

Avg. length of stay for a 120 day prison sanction in KDOC is 41 days.

Avg. length of stay for a 180 day prison sanction in KDOC is 69 days.

*FY 2016 KDOC Profit File.



*FY 16 statistics reflects data obtained from KDOC
TOADS and the Prophet File.

7

- ⇒ Jail Sanctions reflects the number of quick dip jail sanctions administered through Community Corrections each FY.
- ⇒ Prison Sanctions reflects the number of 120/180 day prison admissions to KDOC each FY.
- ⇒ Cond. Viol revocation reflects the number of KDOC admissions for condition violations each FY year.
- ⇒ Increase use of jail sanctions and prison sanctions has resulted in a decline in prison admissions for revoked conditional violators.

Congratulations



Former Commission member Amy Hanley will be sworn in as District Court Judge for the 7th Judicial District of Kansas in Lawrence, Ks.

[Click here to read more](#)



On November 8, 2016, Kevin N. Berens, Thomas County Attorney, was elected as District Judge Division 1 for the 15th Judicial District in Kansas. Mr. Berens has served on the Commission since 2011 and will be leaving at the end of this year. Mr. Berens will take his new position in January 2017. The 15th Judicial District covers the counties of Sheridan, Logan, Thomas, Rawlins, Cheyenne, Sherman, and Wallace Counties.

While a member of the Commission, he served on various committees. Mr. Berens participated as a panelist at the 2013 Annual National Association of Sentencing Commissions Conference and attended the 2016 Annual National Association of Sentencing Commissions.

Judge-elect Berens looks forward to his new position, but will miss working with the members of the Sentencing Commission and its staff.



**2016 Employee of the 1st Quarter Award
- Trish Beck**



**2016 Employee of the 2nd Quarter Award
- Kunlun Chang**

SB 123 Developments and Focal Points 2016

2003 Senate Bill 123

K.S.A. 21-6824

Provides for community supervision (in lieu of incarceration) and mandatory substance abuse treatment for a defined target population on non-violent adult drug offenders who have been convicted of a drug offense under K.S.A. 21-5706.

GOAL: To provide community intervention and the opportunity for treatment to certain offenders with substance abuse problems in order to address more effectively the revolving door of drug addicts through the state prisons, which should be reserved for serious, violent offenders.

The Kansas Sentencing Commission website provides the latest forms and information on [SB 123 issues.](#)

During the summer of 2016, the SB 123 Committee reached a consensus to form a Request For Proposal (RFP) subcommittee for the purpose of contracting a third-party Utilization Management (UM) company to manage the SB 123 Program. The Committee believed that contracting the UM and operational functions of the SB 123 Program was a cost efficient approach to creating an in-house UM and worthy of further investigation through an RFP. The RFP subcommittee consists of Chris Mechler (board member and Court Services Specialist from the Kansas Judicial Branch), Meredith Butler (board member and Director of the 8th Judicial District Community Corrections), Marie McNeal (Director of Community Corrections), and several staff.

In October 2016, Charlene Peacock-Becker, SB 123 Program Director, resigned to pursue other professional goals. Charlene was a great asset to the Sentencing Commission and was integral in increasing accountability to the SB 123 Program. The Sentencing Commission is looking to fulfill the position of Program Director left by Charlene, and interested parties are encouraged to [view the job posting.](#)

Please don't hesitate to email SB123payments@ks.gov with ANY questions.

House Bill 2170 Update

Through the assistance of a federal grant funded by the Bureau of Justice Statistics, the Council of State Governments and other partners, Kansas Sentencing Commission has constructed two projects that will be utilized to further educate practitioners throughout the state on HB 2170. The first of which is a continuing legal education webinar that will be accessible in the spring. The second project is a HB 2170 handbook that includes all the finer points of this bill. Provided below are samples of the type of information that may be found in the FAQ section of the handbook.

► **When imposing a quick dip jail sanction, how does the concurrence of the Chief Court Service Officer or Community Corrections Director need to take place?**

According to K.S.A. 22-3716(b)(4), if a defendant waives the right to a hearing and the sentencing court has not specifically withheld authority, a CSO or CCO may impose a 2-day or 3-day quick dip jail sanction. The CSO or CCO must have the authorization of the Chief CSO or Community Corrections Director. Presently, it is up to each judicial district to develop their own workable system. Written authority in some form would most likely be a preferred method for documentation purposes.

► **Can prior jail credit be applied to decrease the length of a 120-day or 180-day prison sanction?**

No. 2014 HB 2448 amended K.S.A 22-3716(c)(1)(C) and (c)(1)(D) to provide that the 120-day or 180-day prison sanction shall begin upon pronouncement by the court. Prior incarceration time, such as the time the offender spends awaiting a probation violation hearing, shall not be counted towards service on the prison sanction. However, time spent in county jail awaiting transport to a DOC facility after imposition of the sanction may be counted. (cont.)

House Bill 2170 Update cont...

- **How does time credited for serving a 120-day or 180-day prison sanction apply to a defendant's underlying sentence?**

K.S.A 22-3716(c)(1)(C) and (c)(1)(D) provides that a defendant who receives a 120-day or 180-day prison sanction shall be subject to a reduction of up to 50% at the discretion of the secretary of corrections. In the event that a reduction is awarded, credit towards a defendant's underlying sentence shall be applied based upon actual time served incarcerated.

The Commission has created a new email address for HB 2170 inquiries and submissions of completed waiver forms. Please contact Ebo Browne at HB2170@sentencing.ks.gov for information pertaining to HB 2170.



Did you know...

E-mail your Journal Entry (JE), Probation Violation Hearing (PVJE), or PSI forms as an alternative to mailing them?

Just like everyone these days, we are always looking for ways to cut costs. Save paper and postage!

E-mail to:

chris.chavez@ks.gov

If you email JEs—**please include the following:**

- JE
- PSI
- Date of Birth
- Criminal History worksheet

If you have ANY questions
(785) 296-0923.

☀ **FY 2017 Prison Population Projections** ☀

To view the report click [here](#)

☀ **FY 2017 KDOC Inmate Custody Classification Projection** ☀

To view the report click [here](#)

☀ **2015 Annual Report** ☀ To view the report click [here](#)



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2016 Kansas Sentencing Guidelines— forms

Please Note- Under each form of the highlighted version we have provided and an explanation document describing the latest changes.

Happy Holidays

